***THE HON'BLE MR JUSTICE L.NARASIMHA REDDY**

WRIT PETITION No. 2604 OF 2007

% 14-03-2007

Ramavath Hari

…Petitioner

and

$ The Chief Executive Officer,
A.P.State Wakf Board, Haj House building,
Nampally, Hyderabad & others

…Respondents

! COUNSEL FOR PETITIONER: Sri M.Madhava Reddy

^ COUNSEL FOR RESPONDENTS: Sri S.M.Subhani, Standing Counsel and Sri M.T.Ghori,

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? CITATIONS:

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

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O R D E R:

The 1st respondent published a notification, dated 21.12.2006, proposing to conduct auction of leasehold rights, for purchasing goat skins and other offerings and collections, at a Durgah in Janpahad village of Nalgonda District. The auction was to be conducted on 30.12.2006. The petitioner and several others participated in the auction. The bid of one Shaik Aziz Ahmed S/o.Shaik Ahmed, at Rs.36,15,000/-, emerged as the highest. The bid of the petitioner for a sum of Rs.3,10,000/- was next in the order. Through its proceedings dated 7.2.2007, the 1st respondent awarded the lease in favour of the 2nd respondent, for a sum of Rs.36,15,000/-, on the ground that the highest bidder did not object for the same. The petitioner challenges the proceedings dated 7.2.2007.

The petitioner contends that if for any reason, the lease could not be awarded in favour of the highest bidder, it ought to have been offered to him, and that the award of the lease in favour of the 2nd

respondent, who did not participate in the auction, is contrary to law, and cannot be sustained.

The 1st respondent filed counter affidavit. It is stated that the lease was awarded in favour of the 2nd respondent, with the consent and approval of the highest bidder, and the petitioner cannot be said to have suffered any detriment. An objection is raised to the claim of the petitioner, on the ground that he has withdrawn the EMD of Rs.3,00,000/-, on the date of auction itself. The track record of the 2nd respondent is said to have been taken into account, and it is ultimately urged that the object of the petitioner is only to stall the award of lease, and that he does not possess necessary resources to comply with the conditions of the lease.

The 2nd respondent filed a separate counter affidavit. Apart from adopting the stand of the 1st respondent, it is stated that the petitioner had no right to challenge the lease, inasmuch as it is awarded, for all practical purposes, to the highest bidder. The facts that led to the award of the lease and subsequent thereto, are mentioned.

Heard Sri M. Madhava Reddy, learned counsel for the petitioner, Sri S.M.Subhani, learned Standing Counsel for the 1st respondent, and Sri M.T.Ghori, learned counsel for the 2nd respondent.

The 1st respondent invited tenders for the purpose of awarding the leasehold rights, in respect of offerings, at the Durgha. It is obvious that the said course was adopted, to ensure transparency and fairness. The auction was conducted as proposed, and the participation was restricted to those who deposited EMD and complied

with the other conditions. The result of the auction was that one Mr.Aziz Ahmed became the highest bidder. On the date of auction, there was no reluctance, on the part of the highest bidder. The very fact that he offered the highest amount discloses that he was willing to become a lessee for that amount. The petitioner, who is the 2nd highest bidder, had no option but to give way to the higher bidder. For one reason or the other, the award of the lease did not take place for more than a month. The 2nd respondent admittedly did not take part in the auction. However, he made representations on 24.1.2007 and 6.2.2007, for awarding the lease, in his favour. Having offered highest amount, the highest bidder i.e. Shaik Aziz Ahmed, is said to have expressed his no objection, for award of the lease, in favour of the 2nd respondent, through his letter dated 6.2.2007. On the next date, i.e. 7.2.2007, the impugned proceedings were issued, granting lease in favour of the 2nd respondent.

Whatever be the liberty and right of the 1st respondent, to grant leases to persons, or the agencies of its choice, where no tenders or bids are called, it cannot ignore or discard the outcome of such process, once it is decided to adopt the same. Courts have, in fact, conceded to a tender agency, the right to refuse award of lease, in favour of highest tenderer or bidder, without stating any reason. Where, however, the agency invites tenders or bids and decides to award the lease, it must be guided by the outcome of such process. If it wants to ignore the claim of an otherwise successful tenderer, it has to furnish reasons, which must be acceptable in law. The question of awarding the lease to a person, who did not participate in the bid, ignoring the claims of those who participated in it, does not arise. Such a course would render the very bidding process and issuance of

notification there for, a wasteful exercise and an empty formality. An authority like the

1st respondent, which operates under a statute, cannot act in such a manner.

It is urged on behalf of the respondents that the petitioner incurred disqualification, on account of withdrawal of the EMD. It is difficult to accept this contention. When a different person emerges as highest bidder, there was no question of the petitioner being in the fray. It is not uncommon that whenever tenders or bids are invited, the concerned authority requires the EMD to be kept intact, for a specified period, so that the bidders or tenders down below, can be compelled to enter into lease, in case the tenderers or bidders above them, do not come forward for any reason. The 1st respondent did not require the petitioner to keep the EMD in deposit, for any specified period. Further, it did not object for payment of the same to the petitioner, obviously notifying its intention to award the lease in favour of the highest bidder.

During the course of hearing, the respondents expressed doubt about the capacity of the petitioner, to make the required payments. In this context, an order was passed on 26.2.2006, directing the petitioner, to deposit the requisite amount to the

1st respondent by 2.3.2007. According to the conditions in the notification, 20% of the bid amount is to be deposited, on the date of auction, and another 20%, within one week, thereafter. The balance 60% is to be paid within 120 days. The petitioner states that he approached the 1st respondent for payment of Rs.10,00,000/- and odd, representing 10% of the initial amount and Rs.3,00,000/- as EMD.

According to him, the 1st respondent refused to receive the amount, on the ground that the balance must also be paid. That question, however, becomes secondary, since this court finds that the impugned proceedings cannot be sustained in law.

For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. Since the lease could not be awarded in favour of the highest bidder, the 1st respondent shall offer the same to the petitioner, who in turn shall comply with the conditions of the auction notification. There shall be no order as to costs.

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(L.NARASIMHA REDDY, J)

Dt: 14th March 2007

Note: Issue C.C.tomorrow.
L.R.copies be marked.
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